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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92062714
Party	Plaintiff Diamond Hong, Inc. & H&C Trading Co. Inc.
Correspondence Address	KENNETH CANG LI LAW OFFICES OF KENNETH CANG LI 1745 BROADWAY 17TH FLOOR NEW YORK, NY 10019 UNITED STATES kennethcli@hotmail.com
Submission	Motion for Default Judgment
Filer's Name	(Kenneth) Cang Li
Filer's e-mail	kennethcli@hotmail.com
Signature	/kcl/
Date	01/12/2016
Attachments	motionstrikeanswertaichi.pdf(336720 bytes)

DIAMOND HONG, INC.)	
& H & C TRADING CO. INC.)	
Petitioner,)	MARK: TAI CHI GREEN TEA
)	& A YIN-YANG SYMBOL
)	Reg. No. 4,114,136
)	Reg. date: March 20, 2012
v.)	Cancellation No.92062714
)	
CAI, ZHENG DBA TAI CHI GREEN)	
TEA INC.)	
)	
Registrant)	

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ARGUMENT

REGISTRANT'S COMMUNICATION IS NOT A RESPONSIVE PLEADING ("ANSWER") TO THE PETITION FOR CANCELLATION

Registrant's submitted answer to Petition for Cancellation fails to comply with Rule 8(b)(1) of the Federal Rules of Civil Procedure, made applicable to this proceeding through Trademark Rule 2.116(a), and 37 CFR § 2.106(b) in that it is argumentative in nature and does not respond to the allegations set forth in Petitioner's Petition for Cancellation. Fed. R. Civ. P. 8(b)(1) provides, "In responding to a pleading, a party shall state in short and plain terms its defenses to each claim asserted against it and admit or deny the allegations asserted against it by an opposing party" (emphasis added). *See, also*, 37 C.F.R. § 2.106(b)(1); TBMP § 311.02. Fed. R. Civ. P. 8 (b) provides, in part:

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.


Registrant's answer to Petition for Cancellation is argumentative in nature, thus, is not a responsive pleading (an "answer") to the petition for cancellation because Registrant fails to admit or deny any of the allegations that Petitioner set forth in its Cancellation. Petitioner's Petition for Cancellation consists eight (8) numbered paragraphs setting forth Petitioner's specified claims against the Registrant, while registrant's answer contains only four (4) paragraphs of response. None of these responses passed the muster under Rule 8(b) or TTAB Rule 311.02 as none of Registrant's paragraphs provides any responsive answer to any of Petitioner's one to eight paragraphs in the Cancellation Petition. Each is a mere conclusory, argumentative, vague and ambiguous response, without any consideration of the actual applicability of the defense to the allegations in the Petition for Cancellation and without any identification of the factual basis for the defense. As a result, both Petitioner and this Board can only speculate as to the predicates for those defenses—hardly the "fair notice" required under the rules. As such, the answer should be stricken as improperly pled.

As evidenced by the statements above, Registrant failed to admit or deny many of the allegations in Petitioner's Petition for Cancellation. Fed. R. Civ. P. 8(b)(6) provides that an allegation is admitted "if a responsive pleading is required and the allegation is not denied." Thus, Registrant has effectively admitted at least that (1) Petitioner's TAI CHI, its Chinese equivalent 太極 and a Yin-yang symbol marks are widely recognized and senior to registrant's TAI CHI and a Yin-yang symbol mark, (2) Registrant's Mark and Petitioner's Marks are used in connection with overlapping or related goods (3) Registrant's customer base overlaps with Petitioner's customer base and registrant's intended channels of trade for its goods marketed under registrant TAI CHI plus a Yin-Yang symbol mark overlap with Petitioner's channels of trade, and (4) Petitioner is the owner of two of federal trademark registrations for the wording TAI CHI, its Chinese equivalent 太極 and a Yin-Yang symbol in connection with health care goods, including teas, and that Petitioner's marks have obtained incontestable status. Therefore, the existence of Registrant's said mark will give Registrant *prima facie* evidence of the validity and ownership of Registrant's Mark

and of Registrant's exclusive right to use its TAI CHI plus a Yin-Yang symbol mark, all to the detriment of Petitioner.

Based on Registrant's non-responsive answer to Petitioner's Petition for Cancellation, and Registrant's own admissions, Petitioner will be harmed by the continuous existence of the registration of Registrant's Mark. Wherefore, Petitioner respectfully requests that the Board: (1) grant this Motion by striking Registrant's answer and entering a default judgment against Registrant and (2) grant such other and further relief as the Board deems appropriate.

Respectfully submitted,

By: 
(Kenneth) Cang Li
Attorneys for Petitioner
1745 Broadway, 17th Floor
New York, New York 10019
Tel: (212) 362-6482
Fax: (347) 426-0473
E-mail: Kennethcli@hotmail.com

Dated: January 12, 2016
Atty Docket No. : DH-015-11


CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION TO STRIKE REGISTRANT'S ANSWER
AND FOR DEFAULT JUDGMENT AGAINST REGISTRANT was served on:

Cai, Zheng, DBA Tai Chi Green Tea Inc.
352 S Barnswallow Lane
Vernon Hills, IL 60061

By placing same with the U.S. Postal Service, via first class mail, postage pre-paid, this 12th Day of Jan., 2015

By: 

Name: 
(PRINT OUT)